

## Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 SS-15 NSC-05 SP-02 L-02

H-01 NSCE-00 SSO-00 USIE-00 INRE-00 /048 W

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O R 211845Z FEB 75

FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 4023

INFO AMEMBASSY BUENOS AIRES

AMEMBASSY LA PAZ

AMEMBASSY QUITO

C O N F I D E N T I A L SECTION 1 OF 2 LIMA 1492/1

E.O. 11652: XGDS1

TAGS: EAIR, PE

SUBJ: CIVAIR - U.S./PERU PROBLEM - VIEWS OF AEROPERU LAWYER

REF: LIMA 1443

1. SUMMARY: EMBOFF HAD LONG CONVERSATION WITH AEROPERU  
LAWYER GULMAN. ESSENCE OF HIS POSITION IS THAT AEROPERU  
IS FULLY PREPARED FOR SUSPENSION OF SERVICES AND HAS  
ALREADY REACHED AGREEMENT WITH PANAMA TO FLY PASSENGERS  
THERE FOR ONWARD CONNECTIONS. HE PREDICTS SUSPENSION  
WILL CAUSE NO CONFRONTATION BETWEEN GOP AND USG. HE ASSERTS  
U.S. WILL EVENTUALLY BE UNDER GREAT PRESSURE FROM TOURISTS  
AND BUSINESS TO RENEW SERVICE, AND WHEN NEGOTIATIONS  
AGAIN BEGIN, TWO SIDES WILL START ZERO TO ZERO--  
COMPLETE EQUALITY--WHICH WILL BE ADVANTAGEOUS TO  
AEROPERU.

2. IN EMBASSY OPINION, STRONG POSSIBILITY EXISTS THAT  
VIEWS SUCH AS EXPRESSED BY GULMAN WILL PREVAIL OVER  
MORE MODERATE POSITION. AEROPERU/GOP MAY WELL  
BE WILLING TO SETTLE WITH BRANIFF, BUT ONLY ON AEROPERU'S  
TERMS; IF THIS IS NOT POSSIBLE, SUSPENSION OF SERVICES  
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IS FULLY ACCEPTABLE ALTERNATIVE. IF SUSPENSION DOES

TAKE PLACE, GOP/AEROPERU POSITION IN LONG RUN COULD INDEED BE STRONGER. (NOTE: AS OF NOON FEBRUARY 21, BRANIFF REPORTS NO NEW INITIATIVE ON PART OF AEROPERU AS PREDICTED BY AMBASSADOR-DESIGNATE ARCE AND REPORTED REFTEL.) END SUMMARY

3. EMBOFF HAD OPPORTUNITY FOR EXTENDED EXCHANGE OF VIEWS WITH AEROPERU LAWYER GUILLERMO GULMAN EVENING OF FEBRUARY 20 AT RECEPTION GIVEN BY LOCKHEED. GULMAN OUTLINED HIS VIEW OF AEROPERU'S POSITION WITH RESPECT TO BRANIFF, AND IT IS CLEAR THAT HE BELIEVES AEROPERU IS BARGAINING FROM POSITION OF GREAT STRENGTH. HE COMPLAINED THAT BRANIFF DOES NOT REALIZE REALITIES OF ITS POSITION AND IS HENCE NOT WILLING TO BARGAIN. IN TWO MEETINGS ON FEBRUARY 13 AND 17, HE CLAIMED HE HAD GIVEN AWAY MORE THAN AEROPERU PRESIDENT SOTO HAD WANTED HIM TO AND THAT THERE IS STILL ROOM FOR MANEUVER IN AEROPERU'S POSITION, BUT BRANIFF HAD WALKED AWAY AND WOULD HAVE ONLY THEMSELVES TO BLAME FOR FAILURE OF NEGOTIATIONS. ACCORDING TO GULMAN, BRANIFF SHOULD RECOGNIZE GREAT OPPORTUNITIES WHICH LIE IN DIVIDING PERUVIAN MARKET WITH AEROPERU. TOGETHER, AND WITH COOPERATION OF RESPECTIVE GOVERNMENT AUTHORITIES, THEY COULD FORCE LUFTHANSA OUT OF LIMA/NEW YORK MARKET WHERE IT HAS NO REASON TO BE. FURTHER, PRESENT RESTRICTIONS ON BRANIFF'S LIMA/BRAZIL OPERATIONS ARE ONLY BENEFITTING BRAZILIAN CARRIERS, WHICH GULMAN SAID HE DID NOT WANT. BRANIFF CAN AND SHOULD HAVE THIS TRAFFIC IF THEY WOULD COMPROMISE.

4. EMBOFF SAID THAT HE UNDERSTOOD THAT FEBRUARY 13 POSITION OF TWO SIDES HELD SOME POSSIBILITY OF AGREEMENT, BUT THAT WHEN BRANIFF HAD REJECTED POOLING, WHICH IS UNACCEPTABLE TO USG, AEROPERU IN FEBRUARY 17 MEETING HARDENED ITS POSITION IN A WAY UNACCEPTABLE TO BRANIFF. EMBOFF SUGGESTED THAT SPACE SHARING FORMULA PROPOSED BY BRANIFF MIGHT OFFER SOLUTION. GULMAN REJECTED SPACE SHARING OUT OF HAND AS "UNINTERESTING."

5. GULMAN SAID HE HAD OUTLINED AEROPERU'S POSITION IN DETAIL TO SOUTH IN RESPONSE TO SOUTH'S SUGGESTION THAT CONFIDENTIAL

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SMOE MINISTER IN GOP OBVIOUSLY DOES NOT WANT AN AGREEMENT. GULMAN SAID HE TOLD SOUTH THIS IS NOT SO (ALTHOUGH GULMAN TOLD EMBOFF THAT TRANSPORT MINISTER MENESES IS QUITE PREPARED FOR AND INDEED WOULD NOT MIND A SUSPENSION OF SERVICES). POINTING OUT TO EMBOFF THAT HE HAD GAINED HIS EXPERIENCE AS A LAWYER FOR U.S. COMPANIES (CONCHAN-CHEVRON), HE SAID BRANIFF AND USG, JUST AS IPC BEFORE THEM, HAD FAILED TO ANALYZE THE SITUATION

CORRECTLY. HE WENT ON TO MAKE THE FOLLOWING POINTS:

A. IN RESPONSE TO EMBOFF QUESTION, GULMAN SAID THERE WAS NO REASON WHY BRANIFF CANNOT CONTINUE PRESENT OPERATIONS AFTER ITS PERMIT EXPIRES AT MIDNIGHT FEBRUARY 28. BRANIFF HAS FILED FOR NEW PERMIT, AND DGTA CAN ALLOW IT TO PERATE ON PROVISIONAL BASIS WHILE APPLICATION IS BEING CONSIDERED.

B. AEROPERU HAS CONSULTED "FIFTEEN PROMINENT U.S. LAWYERS" (SIC) EXPERIENCED IN AIR TRANSPORT MATTERS. ALL HAVE SAID THAT IF CAB ISSUES SHOW-CAUSE NOTICE AND IF AEROPERU TAKES CASE TO COURT, THERE IS A 90 PERCENT CHANCE THAT AEROPERU WILL WIN AND WILL BE ABLE TO CONTINUE SERVICES REGARDLESS OF WHAT HAPPENS TO BRANIFF.

C. ATTEMPT BY USG/CAB TO CUT OFF AEROPERU SERVICES, EVEN IF SUCCESSFUL, WILL NOT LEAD GOP TO CONFRONTATION WITH USG. GOP WILL RESPONS BY DENOUNCING BILATERAL WITH EXPECTATION IT WILL EVENTUALLY BE IN A POSITION TO NEGOTIATE NEW BILATERAL MORE REFLECTIVE OF ITS CIVIL AIR POLICIES.

D. AEROPERU HAD MADE CONTINGENCY PLANS TO HANDLE TRAFFIC IN EVENT OF SUSPENSION. IT HAS AN AGREEMENT WITH PANAMA TO OPERATE ITS FLIGHTS TO THAT COUNTRY WHERE PASSENGERS CAN TRANSFER. WITH EQUIPMENT ON HAND AND NEW PLANES IT EXPECTS TO BUY, AEROPERU WILL BE ABLE TO HANDLE THE LOAD WITHOUT INCONVENIENCE EITHER TO PERU OR THE TRAVELING PUBLIC.

E. LOCAL BRANIFF REPRESENTATIVES (READ PFLUCKER AND DEL SOLAR) HAVE COMPLETELY MISLED THEIR OWN PRINCIPLES AND USG. THEY WERE "BORN WITH SILVER SPOONS IN THEIR MOUTHS" (SIC) AND FAIL TO RECOGNIZE NEW REALITIES, THUS MISREPRESENTING PERU'S POSITION. FURTHER, THEY HAVE RELIED ON REPORTS FROM "CERTAIN AIR FORCE GENERALS" TO EFFECT THAT SOTO WILL BE REPLACED AND MORE REASONABLE ATMOSPHERE WILL PREVAIL. THIS IS NOT SO; GENERAL VELASCO HAS CONFIDENCE IN SOTO, WHO WILL STAY TO SEE THIS MATTER THROUGH.

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 SS-15 NSC-05 SP-02 L-02

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FM AMEMBASSY LIMA

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AMEMBASSY LA PAZ

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C O N F I D E N T I A L SECTION 2 OF 2 LIMA 1492

F. ACCORDING TO GULMAN, IF SERVICES ARE SUSPENDED AEROPERU'S LONG RUN BARGAINING POSITION WILL BE IMPROVED. PRESSURE WILL BE PLACED ON U.S. TO RENEW SERVICES BY BOTH TOURISTS AND BUSINESSMEN, PARTICULARLY AS PETROLEUM DEVELOPMENT IMPOSES GROWING AIR TRANSPORT DEMANDS. WHEN BRANIFF OR OTHER U.S. CARRIER ASKS TO REOPEN NEGOTIATIONS, "WE START FROM ZERO TO ZERO--COMPLETE EQUALITY--YOU WANT FOUR FLIGHTS, THEN GIVE US FOUR FLIGHTS." AEROPERU WOULD THUS BE FREE OF PRESENT DISADVANTAGE OF BARGAINING WITH CARRIER ALREADY OPERATING MUCH LARGER SERVICE.

G. LONG RUN POSITION OF AEROPERU WILL ALLEGEDLY BE FURTHER AIDED BY COMING INEVITABLE CHANGE (SIC) IN U.S. AIR TRANSPORT PHILOSOPHY. WITHIN 45 TO 60 DAYS, GULMAN PREDICTED, THE CAB WILL ACT UNILATERALLY TO RESTRICT KLM, USING IN THE PROCESS PRECISELY THE SAME ARGUMENTS USED BY THE GOP. PANAM AND TWO ARE IN GRAVE FINANCIAL TROUBLE. THEIR TRANS-ATLANTIC TRAFFIC IS MEASURED IN THE HUNDREDS OF MILLIONS OF DOLLARS. PRESSURE BY THEM ON CAB TO CHANGE EXISTING U.S. POLICY IS THEREFORE ENORMOUS. BRANIFF, WITH OVERSEAS BUSINESS MEASURED IN THE TENS OF MILLIONS, WILL BE UNABLE TO PREVENT CAB FROM SHIFTING TO POLICY WHICH  
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MORE CLOSELY PARALLELS PERUVIAN PHILOSOPHY. WITH CHANGE

IN U.S. CIVIL AIR POLICY, CAB PERSONALITIES WILL ALSO CHANGE, AS THOSE WHO HAVE CONSISTENTLY DEFENDED TRADITIONAL POLICY WILL INEVITABLY BE DISCREDITED (SIC). (WITH SPECIFIC REFERENCE TO U.S. NEGOTIATING TEAM, GULMAN SIAD OTHER U.S. CARRIERS HAVE TOLD HIM THAT U.S. OFTEN TAKES STRONGER POSITION IN DEFENSE OF CARRIER RIGHTS THAN CARRIERS THEMSELVES WANT.) PERSONALITIES ON PERUVIAN SIDE CAN ALSO CHANGE. IN ANY EVENT, THESE ALTERED CIRCUMSTANCES CAN ONLY FAVOR THE PERUVIAN POSITION.

6. COMMENT: GULMAN'S EXPOSITION WAS AN ARTICULATE AND PERSUASIVE PRESENTATION OF THE PERUVIAN HARD LINE. WHILE IT HAS BEEN EVIDENT THROUGHOUT OUR CIVAIR CONVERSATIONS THAT A MORE MODERATE POINT OF VIEW EXISTS AMONG AT LEAST SOME ON THE PERUVIAN SIDE, IT HAS ALSO BEEN EVIDENT THAT AT EVERY POINT AT WHICH IT APPEARED SOME SOLUTION MIGHT BE FOUND, THE HARD LINE HAS CONSISTENTLY PREVAILED.

7. GULMAN'S LOGIC OF COURSE FAILS TO TAKE INTO ACCOUNT SEVERAL CONSIDERATIONS IMPORTANT TO THE DEVELOPMENT OF AN ECONOMICALLY VIABLE AIR TRANSPORT OPERATION AND MAKES SEVERL EXTREME ASSUMPTIONS. NEVERTHELESS, WE MUST RECOGNIZE VERY GREAT POSSIBILITY THAT GOP/AEROPERU HAVE FOUND THEIR ARGUMENTATION PERSUASIVE AND WILL BE GUIDED BY IT. CERTAINLY THE FACT THAT AEROPERU HAS MADE NO ATTEMPT TO CONTACT BRANIFF, DESPITE AMBASSADOR-DESIGNATE ARCE'S CONVERSATION WITH AMBASSADOR (REFTEL), INDICATES THAT THERE IS LESS WILLINGNESS ON PART OF AEROPERU/GOP TO SEEK COMPROMISE THAN WE HAD HOPED.

8. IT IS ONLY PRUDENT TO ASSUME THAT GOP WILL PERMIT FEBRUARY 28 TO COME AND GO WITHOUT TAKING ANY FURTHER ACTION, BEING QUITE CONTENT TO LEAVE ENTIRELY TO BRANIFF DECISION WHETHER IT WILL CONTINUE TO OPERATE ON PRESENT SCHEDULE. IN THIS SCENARIO, DECISION TO TERMINATE WILL BE BRANIFF'S AND ACTION AGAINST AEROPERU WILL BE CAST AS UNILATERAL ACTION ON PART OF USG/CAB WHICH GOP AND AEROPERU HAVE DONE NOTHING TO PROVOKE.

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9. ACCORDING TO GULMAN'S SCENARIO, SATISFACTORY INTERIM ARRANGEMENTS WILL BE MADE TO MEET AIR TRANSPORT DEMANDS, AND WHEN USG AND GOP EVENTUALLY RETURN TO NEGOTIATING TABLE, GOP WILL BE IN STRONGER POSITION THAN BEFORE. EMBASSY WILL WELCOME ANY COMMENT THE DEPARTMENT MAY HAVE ON GULMAN'S PRESENTATION, IN PARTICULAR ANY SUGGESTIONS ON EXPLOITATION OF WEAK POINTS WITHIN IT.  
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## Message Attributes

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